



December 11, 2000

Mr. David Meisell
Director, Human Resources
Ector County Hospital District
P.O. Box 7239
Odessa, Texas 79760-4000

OR2000-4670

Dear Mr. Meisell:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142086.

The Ector County Hospital District (the “district”) received a request for the personnel files of a former district employee. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We note at the outset that the district has failed to submit to this office, within fifteen business days of its receipt of the request for information, a copy of the written request for information, as required by section 552.301(e)(1)(B) of the Government Code. Therefore, pursuant to section 552.302, the district must release the requested information, unless there is a compelling reason to withhold any of the information in question from the public. As a general rule, a governmental body can rebut the statutory presumption of openness by showing that the information at issue is deemed to be confidential under some other source of law or that the interests of third parties are at stake. *See* Open Records Decision No. 630 at 3 (1994). Accordingly, a demonstration that information is excepted from disclosure under section 552.101 may overcome the presumption under section 552.302 that the requested information must be released. *Id.*

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 protects information that is encompassed by constitutional or common law privacy. Constitutional privacy under section 552.101 protects two kinds of interests. *See* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987); *see also Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). The first is the interest in independence in making certain important

decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See* Open Records Decision No. 455 at 3-7 (1987); *see also* *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See* Open Records Decision No. 455 at 6-7 (1987); *see also* *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985), *reh’g denied*, 770 F.2d 1081 (1985), *cert. denied*, 474 U.S. 1062 (1986). Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” Open Records Decision No. 455 at 8 (1987) (quoting *Ramie v. City of Hedwig Village*, 765 F.2d at 492). You have not demonstrated that the information in question is protected from disclosure under section 552.101 in conjunction with constitutional privacy.

Information must be withheld from the public under section 552.101 in conjunction with common law privacy when (1) it is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The specific matters considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimacy, psychiatric treatment, attempted suicide, and injuries to reproductive organs. *Id.* at 683; *see also* Open Records Decision No. 659 at 5 (1999). You have not shown that the requested information must be withheld from the public under section 552.101 in conjunction with common law privacy.

You also contend that the information in question is protected by the attorney-client privilege. This office has determined that the attorney-client privilege is encompassed by section 552.107(1) of the Government Code, rather than section 552.101, which generally does not encompass evidentiary privileges. *See* Open Records Decision Nos. 575 (1990) (construing statutory predecessor to section 552.107(1)), 574 (1990) (same). We also have determined that a claim of attorney-client privilege under section 552.107(1) does not constitute a compelling reason sufficient to overcome the presumption under section 552.302 that information is subject to required public disclosure and must be released. *See* Open Records Decision No. 630 (1994). Accordingly, the district may not withhold the requested information under section 552.107.

In summary, the district has not demonstrated that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with either constitutional or common law privacy. A claim of attorney-client privilege under section 552.107(1) does not overcome the presumption under section 552.302 that the information in question is open to the public. Therefore, the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

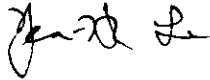
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/JWM/er

Ref: ID# 142086

Encl: Submitted documents

cc: Mr. Ian Herald
Midland Reporter Telegram
201 East Illinois Avenue
Midland, Texas 79701
(w/o enclosures)